IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6702 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOLI VELIYABHAI KHALPABHAI

Versus

KOLI DITIYABHAI JALIABHAI & ANOTHER

Appearance:

MR JITENDRA M PATEL for Petitioner

NOTICE SERVED for Respondent No. 1

MR MA BUKHARI AGP for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 23/03/2000

ORAL JUDGEMENT

This petition is filed for an appropriate writ, order or direction quashing and setting aside the order passed by the Deputy Collector, Chhotaudepur in Fragment (Tukda Bhang) Case No.155 of 1985 dt. July 30, 1987 and

confirmed by the State Government in Revision Application No.SRD/KON /VDD/1/88/89, on July 28, 1988.

2. The case of the petitioner was that he was the owner and occupier of the land bearing Survey No. 341 (Part) situated in the sim of village Vaghava, Tal. Jetpur, Dist. Vadodara. In support of the same, he has produced Village Forms 7-7A and 12. It was his case that adjoining to his land i.e. land bearing Survey No. 341 (Part), there was a land bearing Survey No. 330 belonged to Koli Ditiyabhai Jaliyabhai -respondent no.1 herein. The petitioner has purchased the said land bearing Survey No. 330 in its entirety by a registered sale deed. A registered sale deed was executed on May 25, 1976. The petitioner was put in possession. An entry to that effect was made and was certified on 4th October, 1977 by the revenue authority.

3. It appears that after long lapse of time, the proceedings were initiated by the Deputy Collector under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the "Act"). The vendor as well as vendee were issued notices. The case was registered as Fragment (Tukda Bhang) Case No.155 of 1985. The vendor did not appear before the competent authority, but the present petitioner appeared. He contended that he was the owner of the adjoining land and had purchased the said land by registered sale deed in 1976. Entry to that effect was made in the revenue record and was certified as early as in the year 1977. He had also stated that when he had purchased entire land, there was no breach or violation of any provision of law, particularly when he was owner of adjoining land.

4. The Deputy Collector, however, held that since there was violation of provisions of Section 9 of the Act, the land was liable to be forfeited to the Government, and accordingly, the order was passed.

5. Being aggrieved by the said order, the petitioner preferred revision application before the State Government. Before the revisional authority, it was contended that the provisions of law were not violated inasmuch as the petitioner was owner of the adjoining land. It was also specifically contended that suo motu proceedings were not initiated by the Deputy Collector within "reasonable time" and as observed by the State Government in its order itself, the attention was invited to certain rulings on the point. The State Government, however, without considering those decisions and without

stating anything as to how the period in question which was about nine years could be said to be reasonable, dismissed the revision application, inter alia, observing that there was no illegality in the order passed by the Deputy Collector.

6. The above orders are challenged in this petition. Rule was issued and ad-interim stay regarding possession was granted on February 14, 1990. Today, the matter is called out for final hearing.

7. Mr.J.M.Patel, learned counsel for the petitioner contended that apart from all other grounds, on two important grounds, the petition deserves to be allowed. He submitted that it was a specific case of the petitioner that he was the owner of adjoining land bearing Survey No. 341 (Part). He had purchased the land bearing Survey No. 330. In these circumstances, there was no violation of provisions of law as under the Act, he could have purchased the said land. Secondly, registered sale deed was executed in favour of the petitioner on May 25, 1976. Entry to that effect was made in the revenue record and it was certified on October 4, 1977. He submitted that as suo motu proceedings were initiated by the Deputy Collector in the year 1985, it could not be said that the revisional jurisdiction was exercised within a reasonable period. He, therefore, submitted that the orders passed by the authorities below are required to be quashed and set aside.

8. Mr. Bukhari, learned Assistant Government Pleader, on the other hand, supported the orders passed by the authorities below. He submitted that after considering the facts and circumstances of the case, the Deputy Collector passed an order which was confirmed by the State Government, and there is no reason to interfere with the orders passed by the authorities.

9. In the facts and circumstances of the case, in my opinion, the petition deserves to be allowed. Apart from the fact that the petitioner was the owner of adjoining land, and therefore, there was no fragment, it cannot be said that the proceedings were initiated within a reasonable period. It is settled position of law that revisional proceedings ought to be initiated within reasonable time (vide State of Gujarat Vs. Raghav Natha, AIR 1969 SC 1269).

10. By no stretch of imagination, it can be said that when registered sale deed was executed in favour of the

petitioner in 1976, initiation of proceedings in the year 1985 can be said to be within the reasonable period, particularly when no ground and/or reason whatsoever has been stated by the authorities for such long period of about nine years. On that ground alone, the petition deserves to be allowed.

11. The petition deserves to be allowed and is accordingly allowed. The orders passed by the Deputy Collector and confirmed by the State Government are hereby quashed and set aside. Rule is made absolute accordingly. No order as to costs.

Date:23/3/2000. (C.K.THAKKER,J.)
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